

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

REVEREND GREG LEWIS, SOULS TO THE POLLS, et al.

Plaintiffs,

v.

No. 20 CV 284

DEAN KNUDSON, et al,

Defendants.

**DECLARATION OF MARIBETH WITZEL-BEHL IN SUPPORT OF
PLAINTIFFS' COMPLAINT**

I, Maribeth Witzel-Behl, make this declaration in support of Plaintiffs' Complaint.

1. I am the City Clerk for the City of Madison, Wisconsin. As the City Clerk, I am charged with the statutory duty of running elections in the City of Madison, pursuant to chapters 5-11 of the Wisconsin Statutes, and related laws.

2. The election-related responsibilities of the Madison City Clerk's Office include providing absentee ballots to voters and receiving and processing completed absentee ballots. Our office is currently in the process of sending and receiving absentee ballots for the Spring Election scheduled for April 7 ("Spring Election").

3. The coronavirus epidemic that is sweeping the world is having direct and severe consequences for the Spring Election. The epidemic has led to declarations of emergencies by the national, state, and local governments. Orders issued by the Director of Public Health for Madison and Dane County greatly restrict the ability of persons to travel to the polls to register and vote in-person. On March 25, 2020, a new

“Safer At Home Order” from Wisconsin Governor Tony Evers took effect, which orders “All individuals present within the State of Wisconsin . . . to stay at home or at their place of residence” With limited exceptions, the Order requires individuals in the Wisconsin to stay at home through April 24, 2020. Anyone who violates the Order is potentially subject to 30 days imprisonment or a fine up to \$250.

4. Due to the above orders and concerns that people have about their health, many voters and poll workers are reluctant to go to the polls out of concern they may contract COVID-19 or infect others. For example, as of March 24, 2020, the City has had 666 poll workers cancel their assigned shifts at the polls for the Spring Election. That is about 32% of the poll workers invited to work for the Spring Election. The City offers two shifts for poll workers on Spring Election day. As of March 24, 2020, 774 of 1,500 morning shifts and 716 of 1,500 evening shifts were vacant. In addition, about 67% of the City’s poll workers are in the “at risk” category for COVID-19, being over 60 years of age. I anticipate more poll workers deciding not to work for the Spring Election.

5. The City of Madison has an approximate total population of 255,650 residence (213,725 of voting age) and approximately 179,648 registered voters. The City has 152 voting wards and 92 polling stations. As of March 20, 2020, 14 previous polling stations are unavailable due to COVID-19 concerns, and the Madison Metropolitan School District is considering not allowing us to use the 21 school facilities that usually serve as polling locations.

6. Attempting to meet the extraordinary demand for absentee ballots and other requests from voters has strained the capabilities of the Clerk’s office. Some of the

employees have been working 12-17 hour days for more than a week, with no end in sight. This is true even with the reassignment of dozens of other employees of the City of Madison to assist the City Clerk.

7. The health emergency and the fear of contracting COVID-19 has led to an unprecedented number of requests for absentee ballots. As of March 24, the Clerk's Office had sent 40,275 absentee ballots by mail and 1,273 by e-mail. In the 2016 spring presidential primary, Madison voters cast 118,219 ballots, including 10,272 absentee ballots. In the 2012 spring presidential primary, Madison voters cast 46,452 ballots, including 5,190 absentee ballots. The City is anticipating as many as 118,000 absentee ballots to be cast in the April 7 Spring Election.

8. The ever-increasing volume of requests for absentee ballots is threatening to overwhelm the staff available to the City Clerk and raises the distinct possibility that thousands of voters will be unable to exercise the franchise, despite their best efforts to do so.

9. As of Friday, March 20, 2020, the City of Madison had a backlog of over 16,000 email requests for absentee ballots. On March 25, the backlog was reduced to 12,000, but still substantial and fluctuating. By law, the Clerk's Office is required to respond to send an absentee ballot to a voter within 48 hours of receiving the voter's request for a ballot. With the backlog and the deluge of continuing requests for absentee ballots, it is now taking the Clerk's Office approximately one week to send a voter an absentee ballot after receiving his or her request for one. We simply do not have the resources to meet the 48-hour requirement.

10. As noted, the Clerk's Office has already issued over 41,000 absentee ballots and only a few thousand have been returned to the Clerk's office. Many of the email requests for absentee ballots contain so much data that our computer system is unable to download the information.

11. In addition to the above problems, the Clerk's office now receives numerous requests daily from individuals who have received an absentee ballot, but live alone and have no person to witness the ballot. Due to the coronavirus outbreak and the Governor's Safe At Home order, these persons are afraid to leave their homes in search of a witness.

12. Based upon my conversations with many voters over the last week, I expect thousands of voters will not be willing to go to the polls for the Spring Election. These voters and any citizen struggling to obtain and complete an absentee ballot face the impossible task of choosing between possibly contracting a fatal illness, or exercising their right to vote. Poll workers for the City of Madison and other election officials are facing the same dilemma: Do we perform our obligations to run a full and fair election and risk contracting a possibly fatal illness, or do we decline to assist in the election to stay healthy?

13. The circumstances described above makes the 8:00 p.m. election day deadline for receipt of absentee ballots completely unworkable. The combination of the volume of requests for absentee ballots, the ever-increasing backlog we have, and the fact that it now takes about a week to send voters an absentee ballot means that a very large number of absentee ballots from lawful voters will not arrive until after election

day. I estimate that we will receive more than 1,000 absentee ballots after 8:00 p.m. on April 7. Under the current law, all of those voters will be disenfranchised -- their votes won't count.

14. The City also is beginning to receive calls from voters who are currently overseas and unable to return their absentee ballot via mail because the country in which they are located is no longer offering mail service due to COVID-19. The City Clerk's Office contacted the Wisconsin Elections Commission about this issue, and was informed that the only option for these voters is to return their ballot through the mail. The City has issued absentee ballots to over 500 voters who are currently overseas.

15. In addition to the above issues, the unprecedented requests for absentee voting is hampered at times by shortages of mailing labels and envelopes.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct to the best of my knowledge.

Dated this 26th day of March, 2020.

s/ Maribeth Witzel-Behl
Maribeth Witzel-Behl